

THE HONORABLE RICHARD A. JONES

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff;

and

SERAPIA MATAMOROS, et al.,

Plaintiffs-Intervenors;

v.

**TRANS OCEAN SEAFOODS, INC., dba
NEW ENGLAND SHELLFISH**

Defendant.

No. C15-1563 RAJ

[PROPOSED] CONSENT DECREE

I. NATURE OF THE ACTION

I.1 This action originated when Serapia Matamoros, Elena Perea Olea, and Celia Sanchez Perea (the “Charging Parties”) filed charges of discrimination (“the charges”) against Trans Ocean Seafoods, Inc., dba New England Shellfish (“Trans Ocean” or “Defendant”) with the U.S. Equal Employment Opportunity Commission (the “Commission”). The Charging Parties alleged that Trans Ocean

1 subjected them to a hostile work environment based on sex and retaliated against
 2 them for opposing the sexually hostile work environment in violation of Title VII
 3 of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. § 2000e, *et*
 4 *seq.*

5 1.2 The Commission investigated the charges and discovered the related claims of
 6 Maricela Dominguez, who alleged sexual harassment and constructive discharge,
 7 and Saul Martinez, who alleged retaliation.

8 1.3 Following its investigation of the charges, the Commission issued Letters of
 9 Determination, finding reasonable cause to believe that Trans Ocean violated
 10 Title VII as to the above five individuals. Thereafter, the EEOC attempted to
 11 conciliate the charges, and conciliation was unsuccessful.

12 1.4 The Commission filed this lawsuit on September 30, 2015, in the United States
 13 District Court for the Western District of Washington, seeking relief for the
 14 Charging Parties on allegations of sexual harassment and retaliation, seeking
 15 relief for Ms. Dominguez on allegations of sexual harassment and constructive
 16 discharge, and seeking relief for Mr. Martinez on allegations of retaliation. The
 17 EEOC filed an amended complaint on March 22, 2017 to voluntarily dismiss Mr.
 18 Martinez from this action. Serapia Matamoros, Elena Perea Olea, and Celia
 19 Sanchez Perea are collectively referred to in this Consent Decree as the
 20 “Claimants.”

21 1.5 Claimants Serapia Matamoros, Elena Perea Olea, and Celia Sanchez Perea filed
 22 a complaint in intervention on December 9, 2015, alleging that Trans Ocean
 23

violated Title VII and the Washington Law Against Discrimination. A jury trial resulted in a defense verdict on certain claims, including those of EEOC seeking relief for Maricela Dominguez. Thereafter, Plaintiff EEOC and Serapia Matamoros moved for a new trial on her claim of sexual harassment, and the Court granted the motion. Elena Perea Olea and Celia Sanchez Perea moved for a new trial on their sexual harassment claims, and the Court granted their motion.

1.6 The Commission and Trans Ocean enter into this Consent Decree to avoid the cost and uncertainties of further litigation, to fully and finally settle this matter, and to further the objectives of equal employment opportunity as set forth in Title VII.

2. JURISDICTION AND VENUE

2.1 Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3) (“Title VII”), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The Commission and Trans Ocean agree that the underlying acts are alleged to have taken place within the jurisdiction of the United States District Court for the Western District of Washington.

3. SCOPE OF SETTLEMENT

3.1 This Consent Decree is the final and complete resolution of all claims that arose from the allegations of unlawful employment practices contained in the charges, in the EEOC’s administrative determinations, and in the EEOC complaints filed

herein, including all claims by the EEOC and Trans Ocean for attorney fees and costs.

3.2 No waiver, modification, or amendment of any provision of this Consent Decree shall be effective unless made in writing and approved by the EEOC and Trans Ocean, and any substantive change, modification or amendment of any provision of this Consent Decree shall also require approval by the Court.

3.3 This Consent Decree shall encompass and apply to all Trans Ocean officers, managers, supervisors, and employees at its facilities within the Western District of Washington.

4. MONETARY RELIEF

4.1 In settlement of all claims in the Commission's Complaint against Trans Ocean, Defendant shall pay within 30 days after entry of this Consent Decree a total sum of \$75,000.00 Seventy-Five Thousand Dollars ("Settlement Amount"). Monies shall be further allocated from the Settlement Amount in (1) amounts payable to Serapia Matamoros, Elena Perea Olea, and Celia Sanchez Perea within the EEOC's discretion and in consultation with the Claimants. Trans Ocean will not condition the receipt of monetary relief on the Claimants' agreement to: (a) maintain as confidential the facts and/or allegations underlying his charge and the complaint and the terms of this Decree; (b) waive their statutory rights to file a charge with any governmental agency; (c) refrain from reapplying for a job with Defendant; or (d) agree to a non-disparagement and/or confidentiality agreement.

4.2 The Commission will provide Trans Ocean not later than November 2, 2017 with the individual amount payable from the Settlement Amount. Defendant will issue each Claimant an IRS form 1099 for the payment of emotional distress damages

described in this subpart. Claimants' counsel Northwest Justice Project will provide instruction for payment of monies to the Claimants.

4.3 Trans Ocean will mail proof of payment of monies to the Claimants to the following address at the same time that payment is made to any payee:

Carmen Flores
U.S. Equal Employment Opportunity Commission
Seattle Field Office
909 First Avenue, Suite 400
Seattle, WA 98104

5. INJUNCTIVE & OTHER RELIEF

5.1 General Provisions. Trans Ocean, its officers, managers, supervisors, and employees, and successors and assigns at the time this Consent Decree becomes effective, are enjoined from engaging in practices that constitute harassment in violation of Title VII based on an employee or applicant's sex. In recognition of its continuing obligations under Title VII, Trans Ocean shall institute the following policies and practices, which shall remain in effect at all of its facilities in the Western District of Washington for the duration of this Consent Decree. The policies and procedures will state that they are promulgated at the direction of and with the endorsement by the highest level of Trans Ocean's management. These policies and procedures shall be provided to the EEOC for review and comment no later than thirty (30) days prior to implementation. Within fourteen (14) days of receipt, the EEOC will advise Defendant of any comments. EEOC agrees to review the proposed policies and procedures in good faith.

1 **5.2 Anti-Discrimination and Harassment Policies.** Within thirty (30) days of entry
 2 of the Consent Decree, Trans Ocean shall have anti-discrimination and
 3 harassment policies, and incorporate them into an employee handbook, that
 4 include the following elements:

- 5 (A) Clear definitions of prohibited harassment based on sex;
- 6 (B) Clear examples to supplement the definitions of prohibited harassment
 7 based on sex, including examples involving sexual harassment arising in
 8 both the coworker and supervisory contexts;
- 9 (C) Provisions for discipline up to and including termination for incidents of
 10 discriminatory harassment and the failure of managers, supervisors, and
 11 employees to report harassment of which they have knowledge;
- 12 (D) Provisions that complaints of harassment may be made orally or in
 13 writing;
- 14 (E) Provisions that Trans Ocean will conduct a prompt and thorough
 15 investigation after a complaint is made or received and, where appropriate,
 16 take remedial action upon conclusion of an investigation, as described
 17 below.

18 **5.3 Language used in policies.** Trans Ocean shall ensure that all of its EEO policies
 19 and procedures, including those specifically referenced in this Consent Decree,
 20 are written in English and Spanish, and communicated otherwise in Mixteco or
 21 any other language principally used in the workplace, and are distributed to all
 22 employees.

1 **5.4 Disseminating policies.** Trans Ocean will disseminate any new or revised anti-
 2 discrimination and harassment policies as described above by (a) distributing the
 3 new policies to its existing workforce within thirty (30) days of the policy's
 4 adoption; and (b) providing a copy of the policies to all new employees within
 5 ten (10) days of being hired or rehired.

6 **5.5 Complaint Procedures.** Within thirty (30) days of entry of the Consent Decree,
 7 Trans Ocean shall have internal complaint policies and procedures that include a
 8 statement from its highest-ranking officials designed to encourage employees to
 9 come forward with complaints about alleged or suspected violations of its anti-
 10 discrimination and harassment policies. These procedures shall identify
 11 mechanisms will continue to include avenues for making complaints to Trans
 12 Ocean personnel other than the complaining employee's immediate supervisor.
 13 These policies shall protect the confidentiality of the complaining party to the
 14 extent possible. Phone numbers for all avenues for reporting are and will
 15 continue to be included in the policy as well as posted in a conspicuous place at
 16 each of Trans Ocean's facilities.

17 (A) **Prompt Investigations.** Trans Ocean shall ensure that its policies and
 18 procedures provide that complaint handling and disciplinary procedures
 19 regarding all complaints of discrimination, including harassment shall be
 20 investigated, properly documented and addressed promptly. The
 21 investigation shall, at a minimum, including requirements that (1) Trans
 22 Ocean shall begin its investigation of a complaint not later than two business
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1 days after receipt and (2) Trans Ocean shall memorialize findings and
 2 corrective action in a written report including the complaint allegations, the
 3 identity of named witnesses, all witness statements, a summary of
 4 documentary evidence, an explanation of investigative findings and a
 5 description of any corrective action taken.

6 **5.6 *Managerial and Supervisory Monitoring Duties.*** Trans Ocean shall advise its
 7 managers, supervisors, and employees of their duty to actively monitor their
 8 work areas to ensure employees' compliance with the company's EEO policies,
 9 and to report any incidents or complaints of discrimination, including
 10 harassment, of which they become aware to the Trans Ocean employees
 11 responsible for handling such complaints. Trans Ocean's discipline policy shall
 12 provide for supervisor accountability with respect to EEO policies and
 13 procedures.

14 **5.7 *Qualifications and Performance Standards for Managers, and Supervisors.***
 15 Trans Ocean, in evaluating the performance of managers and supervisors, shall
 16 consider how these employees resolve EEO issues. Trans Ocean will include
 17 "commitment to equal employment opportunity" as a criterion for qualification
 18 for these positions to the same extent that other criteria are included.

19 **5.8 *Training.*** Within sixty (60) days of entry of the Consent Decree, Trans Ocean
 20 will require its managers, supervisors, and employees to attend four hours of
 21 mandatory training on sexual harassment. The training shall ensure that all
 22 employees understand their rights and responsibilities under anti-discrimination
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and anti-harassment laws and Trans Ocean's policies and procedures. The training shall educate employees about conduct that is unacceptable in the workplace, including behavior which, if left unchecked, may rise to the level of harassment. The training shall also include instruction to bystanders as to their responsibility for reporting workplace harassment to management. The training shall include specific instruction on Trans Ocean's revised policies and procedures, including avenues for complaints, and will include sample scenarios specifically related to sexual harassment. Such training will be provided in English, Spanish and Mixteco as needed. Trans Ocean will maintain attendance records for such training. The costs of the training shall be borne by Trans Ocean.

5.9 Trans Ocean shall conduct annual, three-hour trainings for all managers, supervisors, and employees on the same subject matter for the duration of this Consent Decree.

5.10 Trans Ocean shall ensure that all training is conducted by a third party with established experience conducting anti-harassment training. Trans Ocean shall identify all proposed trainers for the initial training within thirty (30) days of entry of the Consent Decree. The EEOC will raise any objections to the proposed trainers within fourteen (14) days. Thereafter, Trans Ocean shall provide EEOC with copies of all training materials no later than thirty (30) days prior to use. The EEOC will advise Trans Ocean of any comments to proposed

1 training materials within fourteen (14) days. The EEOC agrees to review the
 2 training materials in good faith.

3 (A) **Trainer & Training Materials.** Trans Ocean shall identify for the
 4 Commission any training programs discussed above in paragraph 5.8 at least
 5 30 days before the training and shall forward the Commission information
 6 sufficient to establish the content of those programs.

7 **5.11 Employee Records.** Within thirty (30) days of entry of this Consent Decree,
 8 Trans Ocean shall certify to the Commission that the Claimants' personnel file(s)
 9 have no reference to any charge or allegation of discrimination against Trans
 10 Ocean and this lawsuit. Upon request, Trans Ocean shall provide the Claimants
 11 with a neutral employment reference confirming the dates of employment and
 12 position(s) held.

13 **5.12 Reporting.** Trans Ocean shall report to the Commission for a period of two (2)
 14 years, which shall run from the date on which the United States District Court for
 15 the Western District of Washington enters this Consent Decree. The reports must
 16 be in writing and submitted on an annual basis during the two-year reporting
 17 period, with the first of such reports being completed no later than six months
 18 after the Court enters the Consent Decree. The reports must include the
 19 following elements:

20 (A) **Certifications.** As part of each annual report, Trans Ocean will certify that it
 21 has:
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- (1) Maintained written EEO policies and procedures and distributed copies of its EEO policies to all new and current employees, as described in paragraphs 5.1-5.3, and to all employees during the training described in paragraph 5.7;
- (2) Complied with the training provisions enumerated in this Consent Decree, as provided in paragraphs 5.7 -5.9;
- (3) Continued to promote policies and procedures to promote EEO accountability by managers and supervisors as required by paragraphs 5.5 and 5.6;
- (4) Complied with all other provisions of this Consent Decree; and
- (5) Confirmed that the attendance records of the training are in Trans Ocean's possession.

(B) ***Copies of Documents.*** As part of each annual report, Trans Ocean will attach copies of the following documents:

- (1) A copy of Trans Ocean's current EEO policies and procedures;
- (2) A list identifying changes, modifications, revocations or revisions, if any, to EEO policies and procedures, concerning or affecting Trans Ocean's harassment policies;
- (3) A summary of all formal and informal sexual harassment complaints at Trans Ocean, if any, by employees and the resolution of each such complaint, identifying the name of the complainant, the home address, home and cell numbers and email address of the

complainant, the date of the incident, and a dated report of the resolution and date of resolution for each complaint including the particulars of the complaint, the individuals involved, a summary of the investigation, and the company's determination and any corrective action taken; and

- (4) A sign-in sheet or list of names and job titles of the managers, supervisors, and employees who completed EEO training, as described in paragraph 5.8, and the date(s) the training was conducted;

5.13 Posting. Trans Ocean shall post the notice attached to this Consent Decree as *Exhibit A* in a clearly visible location frequented by its employees. The notice will be posted in English and Spanish, and communicated otherwise in Mixteco, and will remain posted for the duration of the Consent Decree.

6. SUCCESSOR LIABILITY

6.1 During the term of this Consent Decree, Trans Ocean will provide prior written notice to any potential purchaser of Trans Ocean's businesses, a purchaser of all or a portion of Trans Ocean's assets, or a successor-in-interest of the EEOC's lawsuit, the allegations raised in the EEOC's complaint, and a copy of this Consent Decree within thirty (30) days prior to the execution of any agreement for acquisition or assumption of control of any or all of Trans Ocean's facilities, or other material change in corporate structure, and will simultaneously inform the Commission of the same.

1 **7. DISPUTE RESOLUTION**

2 7.1 If the Commission determines that Trans Ocean has not complied with the terms
3 of this Consent Decree, the Commission will provide written notification of the
4 alleged breach to Trans Ocean and its counsel of record. The Commission may
5 not petition the Court for enforcement of this Consent Decree for at least twenty
6 (20) days after notifying Trans Ocean of the alleged breach. The Commission
7 and Trans Ocean shall use the 20-day period following the written notice for
8 good faith efforts to resolve the dispute.

9 **8. NOTICE**

10 8.1 All notices, reports and correspondence required under this decree will be
11 delivered to the attention of:

12 Carmen Flores
13 Equal Opportunity Commission
14 Seattle Field Office
15 909 First Avenue, Suite 400
 Seattle, WA 98104
 carmen.flores@eeoc.gov

16 **9. RETENTION OF JURISDICTION**

17 9.1 The United States District Court for the Western District of Washington will
18 retain jurisdiction over this matter for the duration of this Consent Decree.

19 **10. DURATION OF CONSENT DECREE**

20 10.1 This Consent Decree shall be in effect for two (2) years from the date the Court
21 enters the Consent Decree. If the Commission petitions the Court for breach of
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1 this Consent Decree, and the Court finds Trans Ocean has violated the terms of
2 the Consent Decree, the Court may extend the duration of this Consent Decree.

3 **II. EFFECTIVE DATE**

4 11.1 The parties are not bound by any provision of this Consent Decree until it is
5 entered by the Court.

6 DATED this 8th day of November, 2017.

7 ROBERTA L. STEELE
Regional Attorney

JAMES L. LEE
Deputy General Counsel

8 JOHN F. STANLEY
9 Supervisory Trial Attorney

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21 Facsimile: (206) 466-6085

22 Attorneys for Defendant

Exhibit A



NOTICE TO EMPLOYEES

This notice is posted pursuant to the settlement of a lawsuit: *EEOC and Matamoros, et al., v. Trans Ocean Seafoods, Inc. dba New England Shellfish*, No. C15-1563-RAJ (W.D. Wash.). The settlement is by “Consent Decree,” meaning a court-ordered document that contains all settlement terms.

In accordance with the Consent Decree, Trans Ocean will provide anti-discrimination training to all supervisors, management, and employees; provide its Equal Employment policies to all employees; implement policies to ensure supervisor accountability with regard to anti-discrimination practices; and report to the EEOC all complaints of sexual harassment it receives from Trans Ocean’s employees for the next two (2) years.

Federal law prohibits an employer from discriminating against any individual based on the individual’s sex with respect to hiring, promotion, demotion, terms and conditions of employment, and/or termination. Federal law also prohibits an employer from allowing any employee to be harassed because of sex. It is also unlawful for an employer to retaliate against those who oppose or resist harassment or discrimination or participate in investigations or legal proceedings regarding complaints of discrimination.

If you believe that you have been harassed, discriminated against because of your sex, national origin, age, race, color, religion, or disability, you are encouraged to contact your supervisor or Francisco Santelices at the following phone number: (360) 961-7715.

Employees have the right to bring complaints of discrimination, including sexual harassment to the U.S. Equal Employment Opportunity Commission, Seattle Field Office at 909 1st Avenue, Suite 400, Seattle, WA 98104-1061, (206) 220-6885, and 1-800-699-4000.

This notice shall remain posted in English and Spanish, and communicated in Mixteco, until November __, 2019. This official Notice shall not be altered, defaced, covered, or obstructed by any other material.